

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC ALLEGED FAILURE OF NORTH)	
MANCHESTER WATER ASSOCIATION, INC., ITS)	
OFFICERS, STEVE DAVIS, BILL HURD, CARL)	
GREGORY HOSKINS, BOBBY WOLFE, HENRY)	CASE NO.
SMITH, TED WOODS, CARL DAVID CRAWFORD,)	2021-00339
AND ITS MANAGER, JERRY RICE, TO COMPLY)	
WITH KRS 278.140, KRS 278.230, 807 KAR 5:006,)	
SEC. 4, AND KRS 278.990.)	

ORDER

On September 22, 2021, on its own motion, the Commission initiated an investigation pursuant to KRS 278.250 into North Manchester Water Association, Inc. (North Manchester Water); its officers, Steve Davis, Bill Hurd, Carl Gregory Hoskins, Bobby Wolfe, Henry Smith, Ted Woods, and Carl David Crawford; and its manager, Jerry Rice, for allegedly failing to comply with KRS 278.140, KRS 278.230, and 807 KAR 5:006 Section 4.

The Commission opened the investigation into North Manchester Water for failing to file its 2020 gross annual revenue operating report (2020 Gross Report) and 2020 annual financial and statistical report (2020 Annual Report), the failure to file the required documents in Case No. 2019-00041,¹ and general concerns about the association's financial situation.² During the discovery process of the case, information was gathered

¹ Case No. 2019-00041, *Electronic Investigation into Excessive Water Loss by Kentucky's Jurisdictional Water Utilities* (Ky. PSC Nov. 22, 2019) Order at 9.

² Order (Ky. PSC Sept. 22, 2021) at 2-4.

that concerned the Commission about the general management of the water association—specifically, its record keeping. The Commission held a formal hearing on January 11, 2023, to take evidence on issues related to the management and financial status of the utility.

LEGAL STANDARD

With certain inapplicable exceptions, a water association is subject to the jurisdiction of the Kentucky Public Service Commission in the same manner and to the same extent as any other utility except as provided in KRS 278.023.³ Under KRS 278.250 and KRS 278.260, the Commission is authorized to investigate and examine the condition of any utility subject to its jurisdiction, including any practice or act relating to the utility service. KRS 278.140 and 807 KAR 5:006, Section 4(1)(a), require a utility to file its gross annual operating revenue report (Gross Report) for the preceding year no later than March 31 each year with the Commission. Commission regulation 807 KAR 5:006, Section 4(2), requires each utility to file its financial and statistical report (Annual Report) no later than March 31 of each year. Extensions of time to file the Annual Report are permitted for good cause, but extensions are not permitted for the Gross Report.⁴

KRS 278.990 authorizes the Commission to assess civil penalties not to exceed \$2,500 for each offense against a utility and against any officer, agent, or employee of a utility who willfully violates any provisions of KRS Chapter 278, Commission regulations, or orders.

³ KRS 278.012.

⁴ 807 KAR 5:006, Section 4(1)(b) and 807 KAR 5:006, Section 4(2)(e).

BACKGROUND

North Manchester Water is a water association organized pursuant to KRS Chapter 273. It operates water distribution facilities that serve approximately 1,969 residential customers, 17 commercial customers, 3 industrial customers, and 8 public authorities in Clay County, Kentucky.⁵ It is a utility subject to the Commission's jurisdiction.⁶

North Manchester Water was a party to Case No. 2019-00041.⁷ In the November 22, 2019 Order (Final Order), the Commission ordered North Manchester Water to accomplish several tasks that would improve the operations and financial health of the utility within six months.⁸ North Manchester Water submitted some of the required information from the Final Order but failed to respond to an additional request for information.⁹

North Manchester Water failed to provide its 2020 Gross Report and 2020 Annual Report by March 31, 2021. Commission Staff contacted North Manchester Water on April 29, 2021, notifying North Manchester Water that both reports were past due.¹⁰ North Manchester Water was again contacted by Commission Staff because the reports had

⁵ *The Annual Report of North Manchester Water Association to the Public Service Commission for the Year Ending December 31, 2021* at 49.

⁶ KRS 278.012.

⁷ Case No. 2019-00041, *Investigation into Excessive Water Loss by Kentucky's Jurisdictional Water Utilities*.

⁸ Case No. 2019-00041, November 21, 2019 Order.

⁹ Case No. 2019-00041, July 21, 2021 Order .

¹⁰ Sept. 22, 2021 Order, Appendix B at unnumbered page 5 .

not been filed after the April 29, 2021 conversation.¹¹ On May 18, 2021, North Manchester Water submitted its 2020 Gross Report¹² and requested a 30-day extension to file its 2020 Annual Report.¹³ Commission Staff advised North Manchester Water to file its 2020 Annual Report as best it could because extensions were not permitted.¹⁴ On July 29, 2022, the Commission's Executive Director sent a letter to North Manchester Water advising it to file its 2020 Annual Report or an investigation could be opened.¹⁵ North Manchester Water finally submitted its 2020 Annual Report on September 9, 2021.¹⁶

North Manchester Water also did not conduct audits of its financial statements. North Manchester Water finally completed the audits for 2017 and 2018 in April 2021.¹⁷ The auditor declined to express an opinion on the financial statements for both 2017 and 2018 due to the failure of North Manchester Water to maintain certain records and supporting information.¹⁸ The audits for 2019, 2020, and 2021 have not been completed.

On November 12, 2021, North Manchester Water filed a response signed by its board of directors' (Board) members Steve Davis, Carl David Crawford, Bobby Wolfe, Ted Woods, Henry Smith, Greg Hoskins, and Ethan Finley acknowledging that North

¹¹ Sept. 22, 2021 Order, Appendix B at unnumbered page 5.

¹² Sept. 22, 2021 Order, Appendix B at unnumbered page 4.

¹³ Sept. 22, 2021 Order, Appendix B at unnumbered page 4.

¹⁴ Sept. 22, 2021 Order at 2.

¹⁵ Sept. 22, 2021 Order at 3.

¹⁶ Sept. 22, 2021 Order at 3.

¹⁷ North Manchester Water's Supplemental Response to Commission Staff's Fourth Request for Information (Staff's Fourth Request) (filed Oct. 14, 2022), Item 4.

¹⁸ North Manchester Water's Supplemental Response to Staff's Fourth Request, Item 4, Exhibit 3.

Manchester Water failed to file its 2020 Gross Report and 2020 Annual Report by the March 31, 2021 deadline as required by KRS 278.140 and 807 KAR 5:006, Section 4.¹⁹ North Manchester Water argued that its 2020 Gross Report and 2020 Annual Report were not intentionally or maliciously late.²⁰ Additionally, North Manchester Water requested that Bill Hurd and Jerry Rice be dismissed as parties from this case. North Manchester Water asserted that Mr. Hurd was no longer a member of its Board, and that Mr. Rice was no longer an employee of North Manchester Water.²¹

Commission Staff conducted an Informal Conference (IC) at which the reports, audits, and overall status of the utility were discussed.²² A hearing was scheduled and, due to varying reasons, rescheduled multiple times.²³ A formal hearing was conducted on January 11, 2023.²⁴ The matter is now ready for a decision.

DISCUSSION AND FINDINGS

Dismissal of Parties

In its November 12, 2021 response to the Commission's September 22, 2021 Order, North Manchester Water stated that Bill Hurd was no longer on its Board.²⁵ North Manchester Water provided additional documentation that Mr. Hurd vacated North

¹⁹ North Manchester Water Response to Commission's Order Dates September 22, 2021 (filed Nov. 12, 2021) (North Manchester Water's Response to Commission Order), Appendix A.

²⁰ North Manchester Water's Response to Commission Order, Appendix A.

²¹ North Manchester Water's Response to Commission Order at 2.

²² Public Service Commission IC Memo (Ky. PSC Mar. 11. 2022).

²³ Order (Ky. PSC. Dec. 16, 2021); Mar. 15, 2022 Order; Order (Ky. PSC May 4, 2022); Order (Ky. PSC Aug. 12, 2022); and Order (Ky. PSC Dec. 16, 2022).

²⁴ Hearing Video Testimony (HVT) of the January 11, 2023 Hearing.

²⁵ North Manchester Water's Response to Commission Order at 2.

Manchester Water's Board in March 2021.²⁶ North Manchester Water also stated that it no longer employed Jerry Rice.²⁷ North Manchester Water stated that it only employed Mr. Rice from March 1, 2019, to October 18, 2019.²⁸ As neither Mr. Hurd nor Mr. Rice is affiliated with North Manchester Water, the Commission finds Mr. Hurd and Mr. Rice should be dismissed from the proceedings. Additionally, based upon the March 2, 2023 Order in this case, Ted Woods is dismissed as a party to this case based upon his removal from the North Manchester Water's Board by the Commission.

Failure to File Reports

Based upon the case record, it is clear North Manchester Water violated KRS 278.140, 807 KAR 5:006, Section 4(1), and 807 KAR 5:006, Section 4(2)(a). North Manchester Water did not file its 2020 Gross Report until May 18, 2021, and it did not file its 2020 Annual Report until September 9, 2021. North Manchester Water acknowledged these reports were late and it violated the statute and regulation.²⁹ North Manchester Water stated it has put Rose Lewis, office manager, in charge of reviewing Commission filings monthly to ensure that no future deadlines were missed.³⁰

During the pendency of these proceedings, the Commission discovered many other concerning facts about North Manchester Water's management and financial condition. The first of which is that the filing of reports continues to be an issue and North

²⁶ North Manchester Water's Response to Commission Staff's Third Request for Information (Staff's Third Request) (filed Jan. 5, 2022), Appendix A, Item 1.

²⁷ North Manchester Water's Response to Commission Order, Appendix A.

²⁸ North Manchester Water's Response to Staff's Third Request, Item 3 Appendix A.

²⁹ North Manchester Water's Response to Commission Order, Appendix A.

³⁰ North Manchester Water's Response to Commission Order, Appendix A.

Manchester Water has been habitually late when filing its reports with the Commission. The 2021 Annual Report was due while this case was pending, and it was filed three months late.³¹ North Manchester Water indicated it is reviewing bids for another accountant to perform the audits since the accounting firm hired to conduct the audits cannot complete the reports in a timely manner.³² At the formal hearing, testimony was provided that the 2019 and 2020 audits still have not been completed, an expected date of completion is not known, and a new auditor has not been selected or retained.³³

Additionally, North Manchester Water is in a poor financial situation as evidenced by the record in this case. North Manchester Water has experienced operating losses in three of the past five years.³⁴ In 1996, Clay County Fiscal Court obtained a loan from the Kentucky Infrastructure Authority (KIA), and North Manchester Water executed a lease agreement with the Fiscal Court.³⁵ The Clay Fiscal Court voted to foreclose on the KIA loan because North Manchester Water was not making payments. Eventually an agreement was reached, and North Manchester Water now makes payments directly to

³¹ *Annual Report of North Manchester Water to the Public Service Commission for the Year Ending December 31, 2021* (filed June 1, 2022).

³² North Manchester Water's Supplemental Response to Staff's Fourth Request, Item 5.

³³ HVT at 10:22:11.

³⁴ *Annual Report of North Manchester Water to the Public Service Commission for the Year Ending December 31, 2017* at 19, *Annual Report of North Manchester Water to the Public Service Commission for the Year Ending December 31, 2019* at 20, and *Annual Report of North Manchester Water to the Public Service Commission for the Year Ending December 31, 2021* at 20.

³⁵ North Manchester Water's Supplemental Response to Staff's Fourth Request, Item 4-4, Exhibit 3.

the Fiscal Court; these payments have not always been timely or the full amount, including two missed payments while this case has been pending.³⁶

North Manchester Water also has not significantly invested in capital improvements to its system since 2010. North Manchester Water was awarded a Cleaner Water Program grant of \$365,443 to conduct system improvements. It is unclear whether North Manchester Water will be able to receive that grant because it does not have the appropriate audited financial records. North Manchester Water had some improvements on testing and maintenance of water meters, but those have not been fully completed.³⁷ North Manchester continues to have high water loss. Its water loss was 34.6772 percent for 2021.³⁸

Finally, of concern to the Commission is North Manchester Water's reliance on individuals without the needed expertise to determine whether it had substantially complied with other Commission Orders. At the formal hearing, Mike Maggard, of Sisler-Maggard Engineering, testified that it was his advice to North Manchester Water's Board that it could not apply for a rate increase until it had fully resolved its water loss issue.³⁹ If North Manchester Water had consulted professionals whose obligations and duties

³⁶ North Manchester Water's Response to Commission Staff's Post-Hearing Request for Information, Items 1 and 2 (filed Feb. 8, 2023) (North Manchester Water's Response to Staff's Post-Hearing Request).

³⁷ North Manchester Water's Supplemental Responses to Staff's Fourth Request, Items 9, 10, 11, and 14.

³⁸ See *Annual Report of North Manchester Water to the Public Service Commission for the Year Ending December 31, 2021* and HVT at 11:29:00 for a discussion regarding the fact that the water loss for 2022 had not yet been completed.

³⁹ HVT at 11:32:37.

include financial review and legal review, the Board could have been properly advised about a water loss surcharge and rate case filing.⁴⁰

Because the Commission has found that North Manchester Water's Board and manager violated KRS 278.140, 807 KAR 5:006, Section 4(1), and 807 KAR 5:006, Section 4(2)(a), the Commission must also determine whether these violations are willful before any penalties may be assessed under KRS 278.990.⁴¹ A willful violation has been defined as an act that is committed intentionally, not accidentally or involuntarily.⁴² It has also been stated that a willful violation does not necessarily and solely entail an intention to do wrong and inflict injury but may include conduct which reflects an indifference to its natural consequences.⁴³ For civil and administrative proceedings, a willful violation has been explained as one which is intentional, knowing, voluntary, deliberate or obstinate, although it may be neither malevolent nor with the purpose to violate the law.⁴⁴

North Manchester Water's Board knew the 2020 Gross Report and 2020 Annual Report were due March 31, 2021. North Manchester Water simply did not file the documents. The behavior is the definition of willful. The Board did not intend to harm North Manchester Water; but the Board's failure was intentional, knowing, and indifferent to the consequences. The Commission finds that Steve Davis, Carl Gregory Hoskins,

⁴⁰ HVT at 11:33:22–11:34:05.

⁴¹ KRS 278.990.

⁴² Case No. 1992-00016, *M.A. V.I.S.S., Inc. and Mr. Darby Alleged Failure to Comply with Commission Regulations* (Ky. PSC July 1, 1992).

⁴³ Case No. 1993-00044, *Jackson Purchase Electric Cooperative Corporation, Inc. Alleged Failure to Comply with Commission Regulations* (Ky. PSC Aug. 14, 1996), citing *Huddleston v. Hughes*, 843 S.W.2d 901, 905 (Ky. App. 1992).

⁴⁴ Case No. 1999-00001, *Bluegrass Gas Sales, Inc., Alleged Violation of KRS 278.300* (Ky. PSC July 8, 1999) at 5, citing *Woods v. Carsey*, 200 P.2d 208 (Cal. App. 1948).

Bobby Wolfe, Henry Smith, Ted Woods, and Carl David Crawford have willfully violated KRS 278.140, KRS 278.230(3), 807 KAR 5:006, Section 4(1)(a), and 807 KAR 5:005, Section 4(2)(a) and should be subject to a civil penalty of \$250 each. The Commission will suspend the civil penalty of \$250 for each of the above individuals conditioned upon their completion of 12 hours of certified water commissioner training approved by the Commission within one year of the date of service of this Order and comply with other requirements of this Order.

Given North Manchester Water's concerning financial status that was uncovered during these proceedings, the Commission finds North Manchester Water should file an application for a general rate adjustment pursuant to 807 KAR 5:001, Section 16, or an application for an alternative rate adjustment pursuant to 807 KAR 5:076 by June 1, 2023. Further, the Commission finds that any application for an adjustment in North Manchester Water's rates should be based upon 2022 data and North Manchester Water's 2022 Annual Report, which should be timely filed with an audit, completed by March 31, 2023. The Commission finds that a rate case filed after North Manchester Water has filed its 2022 Annual Report will provide the clearest picture of North Manchester Water's current operations. The Commission notes that North Manchester Water has required extensions of time to file its Annual Report(s) many times. The Commission strongly advises North Manchester Water to take whatever steps are necessary to file its 2022 Annual Report by the regulatory deadline of March 31, 2023. The Commission will not look favorably upon any motion for an extension of time to file an application for a rate adjustment by North Manchester Water that is based on its failure to timely file its Annual Report with the Commission. The suspension of the \$250 civil penalty is also dependent on North

Manchester Water filing the required reports by March 31, 2023, and for a rate adjustment by June 1, 2023.

Finally, given the continued managerial and operational concerns that continue to arise with North Manchester Water, no matter the makeup its Board, the Commission finds North Manchester Water's Board should complete six hours of water commissioner training yearly, or until further orders of the Commission. This will ensure, going forward, that regardless of who is on North Manchester Water's Board, each Board member should have the basic training required to successfully manage a water association.

IT IS THEREFORE ORDERED that:

1. Bill Hurd, Jerry Rice, and Ted Woods shall be dismissed from these proceedings.
2. The case style of this proceeding is changed as of the date of this Order to the following: *Electronic Alleged Failure of North Manchester Water Association, Inc., Its Officers, Steve Davis, Carl Gregory Hoskins, Bobby Wolfe, Henry Smith, and Carl David Crawford to Comply with KRS 278.140, KRS 278.230, 807 KAR 5:006, Sec. 4, and KRS 278.990.*
3. Steve Davis, Carl Gregory Hoskins, Bobby Wolfe, Henry Smith, and Carl David Crawford are hereby each assessed a civil penalty of \$250 for North Manchester Water's failure to timely file its 2020 Gross Report and 2020 Annual Report, thus violating KRS 278.140, KRS 278.230, and 807 KAR 5:006, Section 4.
4. North Manchester Water shall file its 2019, 2020, and 2021 audited Annual Reports by June 1, 2023.

5. North Manchester Water shall file its 2022 Gross Report and 2022 Annual Report by March 31, 2023.

6. North Manchester Water shall file an application for a general rate adjustment pursuant to 807 KAR 5:001, Section 16, or an application for an alternative rate adjustment pursuant to 807 KAR 5:076 by June 1, 2023.

7. The rate adjustment filed by North Manchester Water on or before June 1, 2023, shall be based upon North Manchester Water's 2022 financial data and 2022 Annual Report.

8. The \$250 civil penalty assessed for each of the individuals listed above in paragraph 3 shall be suspended for one year from the date of service of this Order. Each individual listed above in paragraph 3 may eliminate the civil penalty assessed against him by (1) attending and successfully completing 12 hours of water commissioner training approved and certified by the Commission for calendar year 2023; (2) ensuring that the 2022 Gross Report and 2022 Annual Report are filed by March 31, 2023; and (3) an application for a rate adjustment is filed by North Manchester Water by June 1, 2023.

9. Proof of completion of the water commissioner training shall be filed in the record of this case no later than one month after each Board member's completion of the water training program.

10. All current and future Board members for North Manchester Water shall attend six hours of water commissioner training approved and certified by the Commission yearly, or until further orders of the Commission.

11. Nothing in this Order shall prevent the Commission from entering further orders in this case.

PUBLIC SERVICE COMMISSION


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Vice Chairman


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ATTEST:


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